IN THE SEYCHELLES COURT OF APPEAL

MATHEW SERVINA Appellant

VERSUS

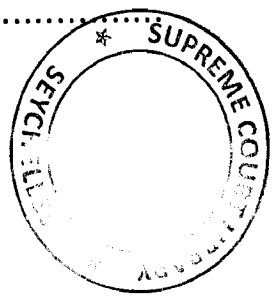
1. **THE SPEAKER, NATIONAL ASSEMBLY**
2. **THE ATTORNEY GENERAL** Respondent

CIVIL Appeal No: 4 of 2001

(Before: Ayoola, P., Pillay & Matadeen JJ.A)

.....

Mr. J. Hodoul for the Appellant
Mr. J. Renaud for the 1st Respondent
Mr. R. Govinden for the 2nd Respondent



JUDGMENT OF THE COURT

(Delivered by Ayoola, P.)

This appeal is from the decision of the Constitutional Court (Perera Ag. C.J., Juddoo and Karunakaran, JJ.) dismissing on 31st January 2001 an application by Mr. Mathew A. Servina ("the Appellant") brought pursuant to Article 130 of the Constitution of the Republic of Seychelles, 1992 ("the Constitution). The Appellant brought his application in May, 1994 and made the Speaker, National Assembly and the Attorney General ("the Respondents") the 1st and 2nd respondents, respectively, to the application. By his Petition, as amended with leave of the Constitutional Court, the Appellant sought declarations, first, that the word "Minister" in Article 69 (5) of the Constitution should be interpreted to include the Petitioner *"and any person who, like himself, served as Minister under any previous Constitution"*; and, secondly, that the Ministerial Emoluments Act, 1993 *"which deprives the Petitioner of a gratuity which it provides for Ministers, contravenes the Constitution in respect of the Petitioner's right and that of the persons he represents to such a gratuity."*

The Appellant's case in the Constitutional Court was that he had served and reasonably discharged his duties as a Minister in the Government of Seychelles first, from June 1977 till June 1979, and, subsequently, under the Constitution of the Republic of Seychelles, 1979 from June 1979 till November 1982. The Constitution of 1993 was written after lengthy deliberations of two Constitutional Commissions and, after the second of these Commissions had finally reached a general consensus regarding all provisions that it should contain, the Constitution was adopted and promulgated on 21st June, 1993. The Appellant alleged by his Petition that –

> *"as part of the general consensus reached, the second Constitutional Commission, after due consideration and debate had agreed and intended that all persons who had served as Ministers under any previous Constitution would be entitled and have a right to a gratuity and/or pension to be provided by Legislation."*

It was the Appellant's case in the Constitutional Court that the Constitution provides in article 69(5) that "*a Minister shall receive such salary, allowances and gratuity as may be prescribed by an Act.'*, and that those provisions were enacted to embody the consensus reached by the second Constitutional Commission. In order to give effect to the agreement and Article 69(5) of the Constitution, the Government proposed a Legislation and presented to the National Assembly the Ministerial Emoluments Bill, 1993. ("the Bill"). In the Bill dated 21st September 1993 the 2nd respondent in the "Objects and Reasons" had explained that:

> *"This Bill seeks to give effect to Article 69(5) of the Constitution and provide for the salary allowance and gratuity of Ministers and the pension and gratuity of persons who cease to be Ministers under the present Constitution, or under any previous Constitution..."*

On the Bill coming before the National Assembly, the Minister for Finance, Communication and Defence, explained in substance and on behalf of the Government that the purpose of the Bill was to give effect to the agreement reached and the commitment given on this issue during the deliberation of the second Constitutional Commission. Despite the position of the Government, the National Assembly amended the Bill and, among other things, limited the provisions of Clause 3(1) thereof which provided for payment of monthly pensions to a person ceasing to hold the office of Minister otherwise than by being removed under Article 75(5) of the Constitution, to a person who has held the office of Minister under the Constitution promulgated on 21st June, 1993. It may well be observed also that another amendment made was to delete "pension" and substitute therefor "gratuity."

The Appellant brought the application to which this Judgment relates contending as follows in paragraphs 12 - 14 of his Petition:

> *"12. ...the Ministerial Emoluments Act, 1993, assented to and enacted on 22nd October, 1993 - which provides that Ministers shall receive a gratuity but deprives the Petitioner and the persons he represents of their right and entitlement to such gratuity; ... seeks to exclude them from the definition of 'Minister' in Article 69(5) of the present Constitution.*
>
> *13. ... in passing Act 3 of 1993, the National Assembly has contravened the Petitioner's said right and failed to exercise its legislative power*

in accordance with Article 85 of the present Constitution.

14. *... as a result of the said contravention by the National Assembly the interest of the Petitioner and that of persons he represents have been seriously prejudiced. Such prejudice is continuing and aggravated with the passing of time."*

The respondents rejected the contentions in paragraph 12 - 14.

The Constitutional Court dismissed the application. Perera, Ag. CJ, who delivered the leading Judgment of the Constitutional Court reasoned that clauses 1 and 5 of Article 69 read together show that clause 5 of Article 69 is prospective. He rejected the invitation to have resort to any "preparatory material", being of the view that the term "Minister" in Article 69(5), as enacted, is clear and unambiguous. In the end he came to the emphatic conclusion that:

> *".....unless there is a constitutional amendment or an amendment of Section 3(2) of the Ministerial Emoluments Act No.3 of 1993 the term "Minister" in Article 69(5) does not permit an extended interpretation to include the Petitioner and any person who had served as Minister under any previous Constitution."*

In the event, dismissing the Petition, he held that neither the Appellant nor any other person who had served as Minister under previous Constitutions has a right to gratuity under Article 69(5) and that, consequently, there had been no contravention of the Constitution. Juddoo and Karunakaran, JJ. agreed.

On this appeal by the Appellant the two questions that arise from the grounds of appeal raised by the Appellant are, first, whether the word "Minister" in Article 69(5) of the Constitution should have been interpreted to include a person who has held the office of Minister under any previous Constitution of Seychelles; and, secondly, whether Section 3(2) of the Ministerial Emoluments Act, No.3 of 1993 contravened the Appellant's right under Article 69(5) of the Constitution.

The Constitution was promulgated by the Constitution of Seychelles (Third Republic) (Promulgation) Notice, 1993 made by the President in exercise of the powers conferred by Section 8(1) of the Republic of Seychelles (Preparation and Promulgation) Act, 1992. It is stated in the recital in the Notice that the draft Constitution was approved by more than 60% of the votes cast at a referendum to which the draft was submitted from the 15th to the 18th June 1993. The Constitution was thus truly as stated in its preamble one which the People of Seychelles:

> *"adopt and confer upon (themselves) ... ... as the fundamental and supreme law of (their) Sovereign and Democratic Republic."*

Chapter V of the Constitution provides for the Executive. By Clause 1 of Article 66 the Executive Authority of the Republic shall vest in the President who shall exercise that authority in accordance with the Constitution and the Laws of Seychelles. Clause 1 of Article 67 established a Cabinet consisting of the Ministers. By virtue of Article 68 the Cabinet shall be responsible for advising the President inter alia with respect to the policy of the Government. Article 69 with which this appeal is directly concerned provides as follows:

"69(1)There shall be such number of Ministers, not being less than seven or more than fourteen, as the President may, from time to time determine.

(2) The President may, with the approval of a majority of the Members of the National Assembly, appoint a person who is a citizen of Seychelles and who has attained the age of eighteen years to the office of a Minister.

(3) Where a person who is a Member of the National Assembly is appointed to the office of Minister, the person shall, on assuming the office, cease to be a Member of the Assembly.

(4) A person shall, before assuming office as Minister, subscribe before the President the Oath of Allegiance and such other oath, as may be prescribed by an Act, for the due execution of the functions of that office.

(5) A Minister shall receive such salary, allowances and gratuity as may be prescribed by an Act.

(6) The salary, allowances or gratuity payable under Clause (5) shall be a charge on the Consolidated Fund."

Articles 70 and 72 deal respectively with functions of Ministers and term of office of Minister. A Minister may resign from office or be removed from office as provided for in article 73.

It is evident from the foregoing provisions of the Constitution that a Minister is a person appointed to the office of Minister. A person is a "Minister" pursuant to the Constitution only during his term of office of Minister. He ceases to be a "Minister" when his term of office expires as provided for in article 72, by death; or resignation; or, removal from office; or, "until immediately before the beginning of the term of the person next elected, after the Minister's appointment, to the office of President".

Notwithstanding the above provisions of the Constitution, Mr. Hodoul, learned counsel for the applicant, argued with considerable tenacity that we should interpret the word "Minister" in clause 5 of article 69 as including a person who has held the office of Minister under any previous Constitution. He drew strength for this submission from three sources, namely: first, an alleged "agreement" reached at the second Constitutional Commission; secondly, the stated objects and reasons for the Ministerial Emoluments Bill presented by the Government; and, thirdly, the interpretation of the "agreement" by the Minister in his presentation of the Bill to the Assembly.

The arguments placed before us in opposition to the contention of learned counsel for the appellant are short but strong and formidable. In short they are, as argued by Mr. J. Renaud, learned counsel for the first respondent, that the interpretation of the word "Minister" sought by the Appellant, if accepted, would have the result of extending the literal and unambiguous meaning of the word so as to make its use retrospective; and, as argued by Mr. Govinden, Learned State Counsel, on behalf of the 2nd respondent, that the meaning of Article 69(5) is plain and conclusive and there was no need to go to the "travaux preparatoires" for its meaning.

The Constitution provides its own general principles of interpretation when it provides in paragraph 8 of Schedule 2 that -

> *"For the purposes of interpretation -*
>
> *(a) the provisions of this Constitution shall be given their fair and liberal meaning.*
> *(b) this Constitution shall be read as a whole; and*

> *(c) this Constitution shall be treated as speaking from time to time.*

Where, as in this case, an enactment provides its own general principles of interpretation, and those general principles of interpretation are adequate for the interpretation of the word or provisions of the enactment concerned, resort to other principles or aid to interpretation is not justifiable. In regard to retroactivity of statutes, Article 2(2) of the Civil Code provides that:

> *"No law shall be construed to have retroactive effect unless such construction is expressly stated in the text or arises by necessary and direct implication."*

These are the principles that are immediately applicable in the interpretation of Article 69(5).

A fair and liberal meaning of the provisions of an enactment is one which is not narrow and strict as to operate unfairly. The essence of fair and liberal interpretation of statutes is that where their provisions are capable of interpretation that would embrace a wider category in the benefits and privileges it confers or protection it affords, a narrower interpretation that excludes should be avoided. Hence, for instance where a statute confers a benefit on a "child", fair and liberal interpretation of the word "child" will not permit it to be interpreted as meaning only "legitimate child." The application of fair and liberal meaning principle of interpretation does not, however, permit the Courts to put meanings on words which they are not capable of or to put strained meanings on words which are not obscure or to re-write or amend a statute. As stated in Lawrence v Mc Calmont II L. Ed. 326 cited in Black's Law Dictionary (4th Edn) liberal construction means "*not that the words should be forced out of*

their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes of the instrument".

The principle that a statute should be read as a whole implies that its provisions should be read harmoniously and not as separate enactment; that unless expressly stated or dictated by necessary implication, different meanings should not be ascribed to the same word in the statute; and, that one provision can be used to understand the meaning of another.

That the Constitution should be treated as speaking from time to time means that it should be treated as a living organic document applying and applied to circumstances that arise after its promulgation with the same freshness as it applied when it was enacted; and, interpreted to address circumstances that may arise thereafter.

These general principles of interpretation established by paragraph 8 of Schedule 2 of the Constitution make the interpretation that counsel for the Appellant has invited us to put on Section 69(5) of the Constitution untenable. The word "Minister" in Article 69(5) cannot be divorced from the word as used in the other clauses of that Article and, indeed, as used in the whole of Chapter V of the Constitution. A combined reading of Articles 69 to 75 of the Constitution shows that their provisions related to the appointment, functions, terms of appointment and of office of Ministers. These are provisions, which are essentially prospective and cannot in any way relate to persons who have held the office of Minister under a previous Constitution. It will be absurd and totally without justification to isolate clause 5 of Article 69 from the rest of those provisions and ascribe a different meaning to the word "Minister" used in that clause.

Reading the Constitution as a whole, it is manifest that the word "Minister" was used to mean a person who holds the office of "Minister" under the Constitution. As rightly pointed out by Mr. Govinden paragraph 4(2) of Schedule 7 further emphasizes this. That sub-paragraph expressly referred to *"the person who performed the functions corresponding to that of the Minister under the existing Constitution."* The necessary inference is that a person so described was not to be regarded as a "Minister" under the Constitution and he was only expressly empowered by the Constitution to *"perform the functions of that office as if the person had been appointed under or in accordance with this Constitution. ..."*

The word "Minister" in the context in which it was used as part of Chapter V and indeed of the Constitution as a whole, is so plain and without obscurity as to make resort to an extrinsic aid to construction unnecessary. The second Constitutional Commission may have discussed the desirability of paying gratuity or pension to a person who had held the office of Minister under a previous Constitution or, even, may have reached a consensus on the matter. At the end of the day, their "agreement" or consensus did not find a place in the draft Constitution, which was submitted to, and approved by, the people at a referendum. The language which was used in Article 69(5) is so unambiguous that it is unnecessary to look for any intention other than that conveyed by the literal meaning of the words used.

The Attorney General's opinion as to the scope of Article 69(5) expressed in the Ministerial Emoluments Bill, 1993, as earlier stated, and the statement of the Minister of Finance on the presentation of the Bill before the National Assembly were, at least, their views as to the scope of that clause. The

jurisdiction to interpret the Constitution rests in the judicature. It is a jurisdiction exercised in the context of actual controversy in the process of litigation. The misconception by any arm of Government as to the true scope of a constitutional provision is not a guide as to how the Court will interpret a clear and unambiguous provision of the Constitution. In this case it is clear that the Attorney General was honestly mistaken as to the scope of Article 69(5). It was thus for instance, that the Attorney General stated in the objects and reasons for the Bill that the Bill sought *"to give effect to Article 69(5) of the Constitution and provide for ... the pension and gratuity of persons who cease to be Ministers under the present Constitution or under any previous Constitution..."*, whereas there is no mention of payment of pension in Article 69(5).

For his part, Minister James Michel who presented the Bill did not in his opening presentation purport that the part of the Bill which made *"provisions for a pension to be paid to someone who has been a Minister under any Constitution, except if he/she was removed from the post under Section 75(5) of the Constitution"* was made in line with the provisions of the Constitution. He was careful enough to avoid such categorical statement.

Be that as it may, it seems clear enough that neither the statement of the objects and reasons for the Bill nor what the Minister said on the presentation of the Bill at the National Assembly, could affect the clear and unambiguous provisions of the Constitution. In the same vein it is unnecessary to have recourse to any preparatory material or to discuss whether or in what circumstances this Court will permit the use of preparatory materials in construing the provisions of the Constitution where the language of the Constitution is clear.

Looked at from any perspective, we feel no hesitation in holding that the Constitutional Court was right when if held that the word "Minister" in Article 69(5) does not include the Appellant or any person who has served as Minister under any previous Constitutions.

That conclusion is probably sufficient to dispose of the appeal. It is expedient, however, to point out the misconception that underlies the second issue raised by this appeal. Learned Counsel for the Appellant argued that: *"Section 3(2) of the Act was adopted by the National Assembly in total disregard of the 'agreement', as argued in ground 2 above, which constitutes the Appellant's right to a pension and/or gratuity."* The "agreement" referred to was an alleged consensus reached at the second Constitutional Commission. The short answer to this line of argument is that, even assuming that there was such 'agreement' as alleged, the enactment of the Ministerial Emoluments Act, No.3 of 1993 does not exhaust the legislative powers of the National Assembly to provide by a subsequent legislation for the payment of gratuity to persons who have held the office of Minister under any previous Constitutions. Where the legislature is empowered to legislate over several subjects, the fact that it has legislated on one of those several subjects does not mean that its power to legislate on the others is exhausted.

Besides, the National Assembly did not need to exercise power pursuant to Article 69(5) of the Constitution in order to legislate for the payment of gratuity to a person who has held office of Minister under any previous Constitutions. Nothing in that Article limits or removes the powers of the National Assembly derived from the abundance of its legislative powers to give legislative effect to the agreement alleged by the Appellant. Although Article 69(5) did not have the scope which the Appellant contends, legislative power of

the National Assembly still exists to achieve the end the Appellant canvasses. That power has not yet been exercised. The conclusion is clear that there is no right of the Appellant that has been contravened by the Assembly legislating in terms of the Ministerial Emoluments Act, 1993.

For the reasons we have given, it is obvious that there is no substance in this appeal and that it must be dismissed.

The appeal is dismissed accordingly. There is no order for costs.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 8th day of **August** 2001